

Control Number: 49367



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DOCKET NO. 49367

PETITION OF OUT OF DISTRICT §
RATEPAYERS APPEALING THE §
WATER RATES ESTABLISHED BY §
THE EL PASO WATER CONTROL §
AND IMPROVEMENT DISTRICT NO. §

PUBLIC UTILITY COMMISSION
OF TEXAS

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COMMISSION STAFF'S RECOMMENDATION

COMES NOW the Staff (Staff) of the Public Utility Commission of Texas (Commission), representing the public interest and files this recommendation and would show the following:

I. BACKGROUND

On March 22, 2019, out-of-district ratepayers (Ratepayers) of the El Paso Water Control and Improvement District No. 4 (the District) filed a petition contesting a rate action that was effective January 1, 2019. The petition was filed pursuant to 16 Tex. Admin Code (TAC) § 24.103 and Tex. Water Code (TWC) § 13.043.

On March 26, 2019, Order No. 1 was issued requiring a recommendation from the Staff by April 22, 2019. Staff requested and was subsequently granted a request for extension of the deadline for its recommendation to May 6, 2019. This request, therefore, is timely filed.

II. ADMINISTRATIVE COMPLETENESS

Staff has reviewed Ratepayers' petition and recommends that it be found administratively complete. To be found administratively complete, the petition must satisfy the requirements of 16 TAC § 24.103 and TWC § 13.043.

A. The Petition Meets the Requirements of 16 TAC § 24.103

Under the requirements of 16 TAC § 24.103, a ratepayer appeal petition requires the following:

- (a) Petitions for review of rate actions filed pursuant to the TWC, §13.043(b), shall contain the original petition for review with the required signatures. Each signature page of a petition should contain in legible form the following information for each signatory ratepayer:

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- (1) a clear and concise statement that the petition is an appeal of a specific rate action of the water or sewer service supplier in question as well as a concise description and date of that rate action;
 - (2) the name, telephone number, and street or rural route address (post office box numbers are not sufficient) of each signatory ratepayer. The petition shall list the address of the location where service is received if it differs from the residential address of the signatory ratepayer;
 - (3) the effective date of the decision being appealed;
 - (4) the basis of the request for review of rates; and
 - (5) any other information the commission may require.
- (b) A petition must be received from a total of 10,000 or 10% of the ratepayers whose rates have been changed and who are eligible to appeal, whichever is less.

Staff has reviewed the petition and finds that it contains the information required by 16 TAC § 24.103(a)(1-5). In its response, the District alleges that the petition is deficient because the wording of the “clear and concise statement” is misleading. The District claims the date of the rate action, the “basis of the request for the review,” and ratepayer telephone numbers are each missing. Staff notes that the effective date of the rates, January 1, 2019, is included on the petition. Further, the petition makes a claim that the rates are “unreasonable” thereby establishing a sufficient basis of the request for the review.

Staff acknowledges that the telephone numbers are missing from the petition, however, this omission is not sufficient to find the petition deficient for two reasons. First, Commission rules do not make the inclusion of that information a requirement for a petition. 16 TAC § 24.103(a) states that each signature page *should* contain the telephone numbers of each signatory ratepayer. A factually similar situation arose in Docket No. 42910, in which the Administrative Law Judge (ALJ) found a similar omission was not fatal to the petition.¹ In that petition, Petitioners had failed to include a “clear and concise statement that the petition is an appeal of a specific rate action” or “a concise description and date of that rate action.” The ALJ observed, “[t]he Commission’s rule does not make the inclusion of the information a requirement.”²

Second, the purpose of the rule is not defeated by the omission of telephone numbers. The information requested by the rule serves to allow parties to confirm that the signatories are

¹ *Ratepayers’ Appeal of the Decision of the Port O’Connor Improvement District to Change Rates*, Docket No. 42910, SOAH Order No. 1 Description of the Case, Scheduling Prehearing Conference, Requiring Issuance if Notice, General Procedural Requirements, and Denial of Motion to Dismiss (Dec. 9, 2014).

² *Id.* at 3.

indeed of the appropriate class of ratepayers. Here, the petition includes the ratepayer name, home address, date of birth, and signature. The petition also includes a phone number for correspondence with the ratepayers' representative and indicates that each of the undersigned designate that representative as a proper contact. If any party wanted to confirm the identity and eligibility of the signatories or contact them, they can do so with the information provided. The District only indicates that the phone numbers are missing and does not claim that any of the signatories are not appropriate ratepayers. As such, the omission of individual telephone numbers should not cause the petition to be found administratively deficient.

Under 16 TAC 24.103(b), protests must be received from at least ten percent of the eligible ratepayers. In this case, Staff has determined that the Ratepayers have met that threshold. Although the District has 2,371 total ratepayers, 247 of them are classified as out-of-district and pay a unique, higher rate. As these 247 ratepayers are experiencing a different rate change than the other customers, only ten percent of the 247 need protest the change. Similarly, in Docket No. 44010, the utility challenged whether a ratepayer subgroup could be separated from the greater body of ratepayers for the purposes of eligibility.³ In that case, the ALJ found that if the subgroup were being "charged different rates from other . . . customers" then that subgroup could be separated out for eligibility.⁴ In the present case, the out-of-district ratepayers pay a rate distinct from in-district ratepayers. As such, they may be considered a separate group for determining eligibility. Therefore, out of the 247 out-of-district ratepayers, at least twenty-five signatories would be required. In the petition, eighty-one ratepayers have signed, thereby satisfying and exceeding the ten percent requirement.

B. The Petition Meets the Requirements of TWC § 13.043

TWC § 13.043(c) requires the petition to be filed "within 90 days after the effective date of rate change." Although the rates in question were passed at a public hearing on December 15, 2015, the rates being protested became effective January 1, 2019. In its response, the District

³ *Petition of the Ratepayers of the River Place Water and Wastewater Systems for Review of a Decision by the City of Austin to Change Retail Rates*, Docket No. 44010, SOAH Order No. 6 on Jurisdiction, Notice, and Request for Interim Rates at 10 (May 7, 2015).

⁴ *Id.*

contends that the effective date is December 15, 2015, and that the 90 day period has elapsed.⁵ However, the plain language of the response and the included attachments indicate that the effective date is January 1, 2019.

In its response, the District states, “Although it became effective on January 1, 2019, this rate increase was also adopted . . . on December 15, 2015” and “the District’s 5% across-the-board rate increase . . . becomes effective on January 1, 2019.”⁶ Further, the District includes slides from the December 2015 public hearing where the rates were adopted. Therein, the proposed rates for out-of-district ratepayers are referred to as “Effective Jan-[20]16”, “Effective Jan-[20]17”, “Effective Jan-[20]18”, “Effective Jan-[20]19”, “Effective Jan-[20]20.”⁷ These sequential references indicate that the District considers the new rates to be effective each year. As the effective date of the rate change was January 1, 2019 and the petition was filed March 22, 2019 – eighty days later – the petition satisfies the requirements of TWC § 13.043(c).

These recommendations are further discussed in the attached Staff memorandum of Katheryn Eiland, Financial Analyst, and Patricia Garcia, Engineering Specialist, in the Commission’s Water Utilities Division.

III. PROCESSING AND PROCEDURAL SCHEDULE

Considering the merits of the petition, Staff recommends that there exists outstanding questions of law and fact that require further development of the record. As such, Staff requests that this proceeding be referred to the State Office of Administrative Hearings (SOAH) so that an evidentiary record may be developed. Consequently, Staff will not recommend a procedural schedule at this time.

IV. CONCLUSION

For the reasons discussed above, Staff respectfully requests the petition be found administratively complete and this proceeding be referred to SOAH to develop an evidentiary record.

⁵ Response of El Paso County Water Control and Improvement District No. 4 to Petition/Motion to Dismiss Petition, Recommendations Regarding How to Proceed with Petition, and Recommendation Regarding Procedural Schedule at 4 (Apr. 22, 2019).

⁶ *Id.* at 4.

⁷ *Id.* Exhibit A at 10.

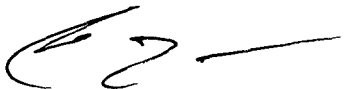
Dated: May 6, 2019

Respectfully Submitted,

**PUBLIC UTILITY COMMISSION OF TEXAS
LEGAL DIVISION**

Margaret Uhlig Pemberton
Division Director

Stephen Mack
Managing Attorney

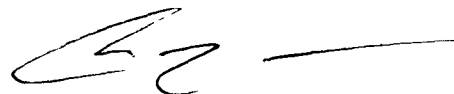


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CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 6th of May, 2019 in accordance with 16 TAC § 22.74.



Creighton R. McMurray

PUC Interoffice Memorandum

To: Creighton McMurray, Attorney
Legal Division

Through: Debi Loockerman, Manager
Heidi Graham, Manager
Water Utility Regulation Division

From: Kathryn Eiland, Financial Analyst
Patricia Garcia, Engineering Specialist
Water Utility Regulation Division

Date: May 06, 2019

Subject: **Docket No. 49367:** *Petition by Out of District Ratepayers Appealing the Water Rates Established by the El Paso Water Control and Improvement District No. 4*

On March 22, 2019, certain ratepayers (Petitioners) of El Paso Water Control and Improvement District No. 4 (District) filed, under Texas Water Code Ann. § 13.043(b)(4), an appeal of the District's water and sewer rates approved by the District's board of directors on December 15, 2018.¹

Staff reviewed the petition and determined the petition contains the following information required by 16 Texas Administrative Code § 24.103 except the Petitioners' telephone numbers:

- (1) A clear and concise statement that the petition is an appeal of a specific rate action of the City as well as a concise description and date of the rate action;
- (2) the name, telephone number, and street or rural route address of each signatory ratepayer and the location of service if it differs from the residential address of the signatory ratepayer;
- (3) the effective date of the City's decision being appealed; and,
- (4) the basis of the request for review of the rates.

Staff believes that the omission of the phone numbers is not a valid reason to dismiss the petition considering all other required information was provided. Staff additionally determined the number of Petitioners exceeds ten percent of the total outside city limit customer class amount of approximately 247.²

Staff noted that a copy of the Petition was provided to the District on March 26, 2019³ and to the

¹ El Paso Water Control and Improvement District response to Staff's first request for information filed 4/29/19 at bates Dist000124 - Dist000131.

² Ibid, bates Dist00055 - Dist00089.

³ Petitioners filing 4/22/19, pages 11 -25.

ratepayers as part of the District's billing statements for November 30, 2018; December 31, 2018 and January 31, 2019.⁴ Therefore Staff recommends that the Commission find the petition sufficient for filing and administratively complete.

⁴ El Paso Water Control and Improvement District response to Staff's first request for information filed 4/29/19 at page 6 of 7.